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CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1096

MRS. MATTIE L. SMITH,

Appellant,

vs.

JEFFERSON COUNTY, GEORGIA, BY AND THROUGH ITS BOARD OF COMMISSIONERS OF ROADS AND REVENUES; J. E. BARROW, CLARENCE HENDERSON, AND SCHOOL DISTRICT No. 2 OF JEFFERSON COUNTY, GEORGIA, BY AND THROUGH ITS BOARD OF TRUSTEES, F. T. McELREATH, W. D. EVANS, S. W. OVERSTREET AND J. W. FUTRAL, AND T. H. RIVERS AS TAX COLLECTOR OF JEFFERSON COUNTY, GEORGIA, AND JAMES HUBBARD AS SHERIFF OF JEFFERSON COUNTY, GEORGIA,

Appellees

BRIEF IN OPPOSITION TO PETITION FOR REHEARING

Because of the fact that the motion for a rehearing suggests a different basis of jurisdiction of the Supreme Court from that asserted in the original appeal, and because of the fact that the motion for a rehearing unintentionally misstates the record in certain respects, we respectfully present this brief and argument in opposition to the motion.

I

In Section I of the motion for a rehearing petitioner invokes the jurisdiction of this Court to grant the writ of certiorari under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, Title 28, U. S. C. A. Section 347(a). It is respectfully suggested that the section referred to has no application whatever to a case in a State Court. The section referred to confers jurisdiction on the Supreme Court of the United States to grant certiorari from Federal Circuit Courts of Appeals and the Court of Appeals of the District of Columbia. The only authority for a case to be taken to the Supreme Court of the United States from the highest Court of the State is embraced in Section 237 of the Judicial Court as amended, 28 U. S. C. A. Section 344. The Supreme Court of the United States will review the decision of the State Court only in cases falling strictly within the terms of this last Code Section, that is to say where a federal question is necessarily and directly involved. It is hardly necessary to cite authorities for this proposition, the same being quoted in great numbers in Section 4 of the note following Code Section 28-344 above referred to.

II

Since counsel for the appellant is mistaken as to this new basis for jurisdiction, his motion and brief add nothing to the original appeal and suggest no new reason why the Court should grant a rehearing. The authorities cited in the motion to dismiss filed by counsel for appellees are directly in point, and the motion for a rehearing suggests no reason why the Court should reconsider its decision dismissing the appeal.

Each one of the decisions of the Supreme Court of the United States cited in the brief attached to the motion for

rehearing is a case arising in a Federal Court, in which the trial court was interpreting the law of various states, and in which the Supreme Court was reviewing the correctness of the trial court's interpretation of the law of the State involved. These authorities have no application to the case at bar, in which the Supreme Court of the United States will not go into any question of the State law, but will assume jurisdiction only on the basis of federal questions. Nor would decisions interpreting the statutes of other states be very helpful in interpreting the Georgia statutes. Nor is there anything in the decisions cited in conflict with the decision in the Supreme Court of Georgia in the case at bar.

III

Since the suggestion involved in same is quite prejudicial, attention is called to the fact that counsel for appellant unintentionally misstates the record in Section IV of his brief where he says that the deed from D. C. Thomas, Sheriff, to Jefferson County, dated July 9, 1928, was "without explanation withheld from the record until August 18, 1942, when it was then recorded in the Clerk's Office of said County in Book VV of Deeds at page 118". It will be noted that the record states that the deed was recorded August 18, 1928, but that the Clerk's certificate to the certified copy introduced by appellant states that it was recorded August 18, 1942. This manifest typographical error was cleared up by the original record which was introduced in evidence by the appellees, and which showed the deed actually recorded August 18, 1928. This evidence and statement clearing up the question appears on page 106 of the original record in the Supreme Court of Georgia. Unfortunately we do not have before us the printed record in the Supreme Court of the United States and cannot cite the page there, but it appears near the

end of the transcript of the evidence introduced in the case.

It will be further noted that the statements of counsel in his summary of the case are statements of the contentions of the appellant in the case and not statements of fact as found by the trial court or the Supreme Court of Georgia. While the Supreme Court of Georgia held that the deed would be good as color of title even if void, the Supreme Court of Georgia states that it does not find the deed void, and cites certain authorities suggesting its view that the deed was not void.

Respectfully submitted,

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